

Chapter 50

Alaska Coastal Management Program (ACMP) Implementation

Article

- 1. Program Administration (6 AAC 50.005 – 6 AAC 50.190)**
- 2. State Consistency Review Process (6 AAC 50.200 – 6 AAC 50.280)**
- 3. Consistency Review Process for Federal Activities (6 AAC 50.305 – 6 AAC 50.395)**
- 4. Consistency Review Process for Activities Requiring a Federal Authorization (6 AAC 50.405 – 6 AAC 50.495)**
- 5. Public Participation (6 AAC 50.500 – 6 AAC 50.520)**
- 6. Elevation and Petition (6 AAC 50.600 – 6 AAC 50.620)**
- 7. General and Nationwide Permits, Categorically Consistent Determinations, and General Consistency Determinations (6 AAC 50.700 – 6 AAC 50.780)**
- 8. Project Modifications and Renewals of Authorizations (6 AAC 50.800 – 6 AAC 50.820)**
- 9. General Provisions (6 AAC 50.925 – 6 AAC 50.990)**

Article 1. Program Administration.

Section

- 05. Applicability of the ACMP consistency review process**
- 25. Scope of project subject to consistency review**
- 35. Division of Governmental Coordination (DGC) responsibility**
- 45. State agency authority**
- 55. Coastal resource district responsibility**

6 AAC 50.005. Applicability of the ACMP consistency review process. (a) A project is subject to one, and only one, of the consistency review processes set out in this chapter if any activity that is part of the project

(1) requires a

(A) resource agency authorization;

(B) federal consistency determination from a federal agency in accordance with 16 U.S.C. 1456(c)(1)-(2) (sec. 307(c)(1)-(2) of the Coastal Zone Management Act) and 15 C.F.R. 930.36 - 930.40; or

(C) federal consistency certification, in accordance with

(i) 16 U.S.C. 1456(c)(3)(A) (sec. 307(c)(3)(A) of the Coastal Zone Management Act) and 15 C.F.R. 930.57 - 930.58; or

(ii) 16 U.S.C. 1456(c)(3)(B) (sec. 307(c)(3)(B) of the Coastal Zone Management Act) and 15 C.F.R. 930.76, from a person who submits to the United States Secretary of the Interior an OCS plan within the meaning given in 15 C.F.R. 930.73; and

(2) is located

(A) within the coastal zone; or

(B) outside the coastal zone but is subject to a consistency determination under 15 C.F.R. Part 930.

(b) Only the consistency review process set out in

(1) 6 AAC 50.200 - 6 AAC 50.280 applies, if the project requires only an authorization from one or more resource agencies;

(2) 6 AAC 50.305 - 6 AAC 50.395 applies, if the project requires

(A) a federal consistency determination; or

(B) an authorization from one or more resource agencies and a federal consistency determination; or

(3) 6 AAC 50.405 - 6 AAC 50.495 applies, if the project requires

(A) a federal consistency certification; or

(B) an authorization from one or more resource agencies and a federal consistency certification. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.025. Scope of project subject to consistency review. (a) Except for a project subject to review under 6 AAC 50.305 - 6 AAC 50.395 or 6 AAC 50.405 - 6 AAC 50.495, the coordinating agency, in consultation with the applicant, any resource agency that requires an authorization, and any potentially affected coastal resource district, shall determine the scope of the project subject to a consistency review. For a project subject to review under 6 AAC 50.305 - 6 AAC 50.395, the scope of the project subject to a consistency review shall be determined in accordance with 15 C.F.R. 930.30 - 930.46. For a project subject to review under 6 AAC 50.405 - 6 AAC 50.495, the scope of the project subject to a consistency review shall be determined in accordance with 15 C.F.R. 930.50 - 930.66 or 15 C.F.R. 930.70 - 930.85.

(b) Except as provided under AS 46.40.094 and 6 AAC 50.700, the scope of the project subject to a consistency review must, at a minimum, include each activity that requires a

(1) resource agency authorization;

(2) federal agency authorization identified under 6 AAC 50.405; or

(3) federal consistency determination. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.035. Division of Governmental Coordination (DGC) responsibility. (a) For a consistency review, and in accordance with AS 44.19.145, AS 46.40.096, and

(1) 6 AAC 50.200 - 6 AAC 50.280, DGC shall serve as the coordinating agency and render the consistency determination for a project that requires an authorization from two or more resource agencies;

(2) 6 AAC 50.305 - 6 AAC 50.395, DGC shall serve as the coordinating agency and render the consistency response for a project that requires

(A) a federal consistency determination; or

(B) an authorization from one or more resource agencies and a federal consistency determination; or

(3) 6 AAC 50.405 - 6 AAC 50.495, DGC shall serve as the coordinating agency and render the consistency response for a project that requires

(A) a federal consistency certification; or

(B) an authorization from one or more resource agencies and a federal consistency certification.

(b) If, in accordance with 16 U.S.C. 1456(c) (sec. 307(c) of the Coastal Zone Management Act) and 15 C.F.R. Part 930, an item is to be submitted to the state agency designated under 16 U.S.C. 1455(d)(6) (sec. 306(d)(6) of the Coastal Zone Management Act) and 15 C.F.R. 923.47, that item must be submitted to DGC.

(c) DGC shall develop, maintain, and update a coastal project questionnaire. A coordinating agency shall use the coastal project questionnaire to solicit information regarding the project description, site information, consistency with the enforceable policies of the ACMP, and necessary authorizations.

(d) At the request of a resource agency coordinating a consistency review under AS 46.40.096(b) and 6 AAC 50.045(b), DGC shall act as a facilitator to attempt to resolve conflicts among the resource agencies, an affected coastal resource district or an applicant regarding the consistency determination. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

Editor's note: On April 18, 1979, the predecessor to the Office of Management and Budget, Division of Governmental Coordination (DGC), within the Office of the Governor, was named by the governor to serve as the designated state agency for purposes of 16 U.S.C. 1455(d)(6) (sec. 306(d)(6) of the Coastal Zone Management Act), 15 C.F.R. 923.47, and 15 C.F.R. Part 930.

6 AAC 50.045. State agency authority. (a) Nothing in this chapter displaces or diminishes the authority of a state agency with respect to coastal uses and resources under that agency's own statutory and regulatory authorities.

(b) For a consistency review, and in accordance with AS 44.19.145(a)(11), AS 46.40.096(b), and 6 AAC 50.200 - 6 AAC 50.280, a resource agency shall serve as the coordinating agency and render the consistency determination for a project that

(1) requires one or more authorizations from only that resource agency; and

(2) does not require a federal consistency determination or federal consistency certification. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096

6 AAC 50.055. Coastal resource district responsibility. (a) A coastal resource district may participate in a consistency review under this chapter by submitting comments to the coordinating agency regarding consistency of the proposed project with the enforceable policies of the ACMP.

(b) A coastal resource district may participate in a consistency review as an affected coastal resource district if the

(1) project is proposed to be located within the coastal resource district boundaries; or

(2) district demonstrates that a project located outside the coastal resource district boundaries may have a direct and significant impact on a coastal use or resource within the coastal zone and within the coastal resource district boundaries.

(c) A coastal resource district whose district coastal management program is incorporated into the ACMP is considered to have expertise in the interpretation of its program. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

Article 2. State Consistency Review Process.

Section

200. Applicability

210. Coastal project questionnaire

215. Pre-review assistance

220. Applicant consistency review packet

225. Determination of completeness and notice to applicant

230. Determination of the scope of the project subject to consistency review

235. Timing of a consistency review

240. Initiation of a consistency review

245. Request for additional information

250. Comment deadlines

255. Review participant comments

260. Proposed consistency determination

265. Final consistency determination

270. Time for issuance of a final consistency determination

275. Resource agency authorization

280. Consistency review schedule modification and termination

6 AAC 50.200. Applicability. The consistency review process described in

(1) 6 AAC 50.200 - 6 AAC 50.280 applies to a project if the project requires one or more resource agency authorizations; or

(2) 6 AAC 50.235 - 6 AAC 50.280 applies to a proposed categorically consistent determination under 6 AAC 50.710 and to a proposed general consistency determination under 6 AAC 50.730. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.210. Coastal project questionnaire. (a) Except as provided in (c) of this section, DGC on request, or a resource agency that receives an application for an activity that may require a resource agency authorization, shall provide to the applicant a coastal project questionnaire. The applicant must return the completed coastal project questionnaire to the resource agency that provided it or to DGC. Based on the information provided by the applicant

in response to the coastal project questionnaire, DGC or the resource agency shall, to the extent feasible, preliminarily identify the authorizations that are required for the project.

(b) If, during its review of the coastal project questionnaire, a resource agency preliminarily identifies a federal authorization or authorizations from more than one resource agency that may be required, the resource agency shall

- (1) send the coastal project questionnaire to DGC; and
- (2) refer the applicant to DGC.

(c) A coastal project questionnaire is not required

(1) for placer mining activity that is reviewed by means of a joint agency annual placer mining application provided by the Department of Natural Resources (DNR); the application must be submitted to DNR;

(2) for an aquatic farm project proposed on state-owned tidelands and applied for through the joint agency aquatic farm application provided by DNR; the application must be submitted to DNR; or

(3) if a categorically consistent determination developed under 6 AAC 50.710 or a general consistency determination developed under 6 AAC 50.730 specifically states that a coastal project questionnaire is not required for the activity to which that determination applies. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.215. Pre-review assistance. (a) Before the start of a consistency review, a coordinating agency shall, on request, assist an applicant by providing information about the consistency review requirements.

(b) At the time an applicant requests pre-review assistance under this section, the applicant shall, at a minimum, provide a brief description of the proposed project. To the extent feasible, the applicant shall provide the coordinating agency with a

- (1) completed coastal project questionnaire;
- (2) map identifying the location of the project and adjacent facilities; and
- (3) description of any man-made structures or natural features that are at or near the project site.

(c) The applicant may request that the coordinating agency provide information including

(1) information about the coastal project questionnaire and the consistency review process;

(2) preliminary identification of coastal resource districts that may have an interest in the project;

(3) to the extent feasible, preliminary identification of applicable enforceable policies of the ACMP;

(4) preliminary identification of the state and federal authorizations likely required for the project and individuals, if known, to contact in other state or federal agencies;

(5) to the extent feasible, preliminary identification of the activities that may require a resource agency authorization, or that may require a federal authorization listed under 6 AAC 50.405;

(6) to the extent feasible, an estimated time schedule for the consistency and resource agency authorization reviews; and

(7) to the extent feasible, preliminary identification of information that may be required to determine consistency with the enforceable policies of the ACMP, compliance with resource agency authorizations, and potential mitigation requirements.

(d) If an applicant requests pre-review assistance under this section,

(1) the coordinating agency may consult with resource agencies and DGC as necessary to assist the coordinating agency in developing the information described in (c) of this section; and

(2) a resource agency may identify issues related to the authorization and potential mitigation requirements and, to the extent feasible, discuss with the applicant how the activity may comply with its statutory and regulatory authorities.

(e) The coordinating agency shall make reasonable efforts to inform a coastal resource district of a proposed project that may affect a coastal use or resource within the district. If a pre-review assistance meeting is scheduled, the coordinating agency shall invite a representative from any potentially affected coastal resource district to the meeting. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.220. Applicant consistency review packet. (a) The applicant shall submit a consistency review packet to the coordinating agency that includes

(1) a completed coastal project questionnaire that includes

(A) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource;

(B) a consistency certification; the consistency certification must include a statement using the following language: “The proposed project complies with the applicable enforceable policies of the ACMP and will be conducted in a manner consistent with the program”;

(C) data and information sufficient to support the consistency certification required by (B) of this paragraph;

(D) maps, diagrams, technical data, and other relevant material that precisely describe the project site location, topographical information, township, range, section, and meridian, and other site specific information; and

(E) a signature and the date signed; and

(2) completed copies of all resource agency authorization applications required for the project, except as provided in (e) of this section.

(b) If a project requires an authorization from two or more resource agencies, the applicant must submit the consistency review packet to DGC, and must submit any authorization application to the appropriate authorizing agency. If a project requires one or more authorizations from only a single resource agency, the applicant must submit the consistency review packet and any authorization application to the resource agency.

(c) The coordinating agency, on its own initiative, or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet, maps, or other documents that the agency cannot duplicate conveniently.

(d) If a resource agency requires a fee for its authorization, an applicant must submit that fee directly to the resource agency.

(e) An applicant must submit, directly to the resource agency responsible for issuing the authorization, an application for an authorization requiring information that must be held in confidence by law. The resource agency shall forward to the coordinating agency a copy of the application with the confidential information deleted, as appropriate. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.225. Determination of completeness and notice to applicant. (a) Except as provided under AS 46.14.160, the coordinating agency shall, within 14 days after receipt of a consistency review packet, determine whether the packet is complete.

(b) A consistency review packet is complete if

(1) the packet meets the submission requirements of 6 AAC 50.220;

(2) an authorizing resource agency determines that an authorization application is sufficient to begin a review under the resource agency's statutory and regulatory requirements; and

(3) the coordinating agency, in consultation with the authorizing resource agencies, determines the packet is sufficient for continued processing even though additional information may be required subsequently.

(c) If the coordinating agency determines that the consistency review packet is complete, the coordinating agency shall notify the applicant and identify the start date for initiating the consistency review under 6 AAC 50.240.

(d) If the coordinating agency determines that the consistency review packet is incomplete, the coordinating agency shall notify the applicant and identify the information necessary to make the consistency review packet complete. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.230. Determination of the scope of the project subject to consistency review. Before the initiation of the consistency review and within the timeframes established under 6 AAC 50.240(a) and (b), the coordinating agency shall determine the scope of the project subject to a consistency review in accordance with 6 AAC 50.025 and 6 AAC 50.700. If a project requires an authorization from more than one resource agency, DGC shall determine the scope of the project subject to review in consultation with each resource agency that requires an authorization. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.235. Timing of a consistency review. (a) Except as provided under 6 AAC 50.280, the consistency review process shall be completed within 30 or 50 days after the start date set under 6 AAC 50.240.

(b) A project is subject to a 30-day consistency review if all required authorizations for the activities, as identified in the list adopted by reference in 6 AAC 50.750, are listed as authorizations subject to a 30-day review.

(c) Except as provided in (b) of this section, a project is subject to a 50-day consistency review. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.240. Initiation of a consistency review. (a) If a project requires an authorization from two or more resource agencies, DGC shall start Day 1 of the consistency review as soon as practicable after, and no more than 14 days after, the date DGC receives a consistency review packet that is determined to be complete in accordance with 6 AAC 50.225.

(b) If a project requires one or more authorizations from only a single resource agency, and if the consistency review packet is determined to be complete in accordance with 6 AAC 50.225, the resource agency may start the consistency review at the time the agency initiates its authorization review.

(c) Day 1 of a consistency review is the date on which the coordinating agency's public notice is provided in accordance with 6 AAC 50.500.

(d) On or before Day 3, the coordinating agency shall

(1) provide to the applicant a notice that the consistency review has been initiated and a review schedule;

(2) provide to each review participant a copy of the consistency review packet, the review schedule with a solicitation for review participants' comments, and a deadline for receipt of comment;

(3) provide a copy of the consistency review packet to a person requesting the information; and

(4) make a copy of the consistency review packet available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.245. Request for additional information. (a) On or before Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, a review participant shall provide the coordinating agency with any request for additional information necessary to determine whether the requestor concurs with or objects to the applicant's consistency certification.

(b) The coordinating agency may, on or before Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) The coordinating agency shall request from the applicant additional information relevant to the proposed project and appropriate in the context of the requestor's expertise or area of responsibility. If a request for additional information is submitted to the coordinating agency that is outside the requestor's expertise or area of responsibility, the coordinating agency shall consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) The applicant must provide the requested additional information to the requestor and a copy to the coordinating agency. The coordinating agency shall ensure that other review participants receive the additional information.

(e) The requestor shall notify the coordinating agency when the requested information is received. Within seven days after receiving the information, the requestor shall notify the coordinating agency whether the information is adequate. If the information is considered to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed to satisfy the original request or new issues raised in the response to the original request.

(f) Nothing in this section prohibits a resource agency from requiring additional information under the statutory and regulatory authorities applicable to the review of the resource agency's authorization. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.250. Comment deadlines. Except as provided under 6 AAC 50.280(a), the coordinating agency shall establish the deadline for receipt of comments at Day 17 in a 30-day consistency review and Day 30 in a 50-day consistency review. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.255. Review participant comments. (a) A comment submitted by a review participant must be in writing, and must

(1) identify that, and explain why, the review participant concurs with the applicant's consistency certification; or

(2) identify that the review participant objects to the applicant's consistency certification, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and the reasons why the review participant considers the proposed project inconsistent with those enforceable policies; and

(C) identify any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified in accordance with (B) of this paragraph, and explain how the alternative measure would achieve consistency with those specific enforceable policies.

(b) In its consistency review comment, a review participant may address an enforceable policy outside the review participant's expertise or area of responsibility. The coordinating agency may not give a resource agency or coastal resource district due deference outside that agency's or district's expertise or area of responsibility.

(c) The coordinating agency shall send the applicant, each resource agency, and any potentially affected coastal resource district, or ensure that those persons receive, a copy of timely submitted comments. Upon request, the coordinating agency shall send other persons interested in the project, or ensure that other persons interested in the project receive, a copy of the comments. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.260. Proposed consistency determination. (a) In developing a proposed consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give a commenting resource agency and coastal resource district with an approved program due deference within that agency's or district's expertise or area of responsibility. In developing a proposed consistency determination and any applicable alternative measures, the coordinating agency must evaluate the applicability of the enforceable policies of the ACMP to the proposed activity and decide how to afford due deference.

(b) Based on the comments received and other available information, the coordinating agency shall determine whether a consensus exists among the review participants regarding a project's consistency with the enforceable policies of the ACMP and any alternative measures that would achieve consistency with the enforceable policies of the ACMP.

(c) If the comments indicate that a consensus does not exist among the review participants, the coordinating agency shall facilitate a discussion among the review participants to attempt to reach a consensus. If the review participants cannot reach consensus, the coordinating agency shall develop a proposed consistency determination that is based on the comments and positions of the resource agencies and affected coastal resource districts.

(d) If the coordinating agency substantially modifies or rejects an alternative measure requested by a commenting review participant within its respective expertise or area of responsibility, the coordinating agency shall consult with the review participant and provide a brief written explanation stating the reasons for rejecting or modifying the alternative measure before issuance of the proposed consistency determination.

(e) On or before Day 24 in a 30-day consistency review or Day 44 in a 50-day consistency review, the coordinating agency shall distribute a proposed consistency determination to the review participants, the applicant, and any person who submitted timely ACMP comments under 6 AAC 50.500(a)-(b).

(f) The proposed consistency determination must

- (1) contain a description of the proposed project;
- (2) contain a description of the scope of the project subject to consistency review;
- (3) propose to concur with or object to the applicant's consistency certification;

and

(4) contain a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(g) In addition to the requirements in (f) of this section, if a concurrence is proposed with the applicant's consistency certification, the proposed consistency determination must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP.

(h) In addition to the requirements in (f) of this section, if an objection is proposed to the applicant's consistency certification, the coordinating agency shall notify the applicant of the objection and shall include in the proposed consistency determination

(1) an explanation of how the proposed project is inconsistent with the enforceable policies of the ACMP;

(2) the identification of the specific enforceable policies and the reasons why the proposed project is to be found inconsistent with those enforceable policies; and

(3) any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified in accordance with (2) of this subsection, and an explanation of how the alternative measures would achieve consistency with those specific enforceable policies; the alternative measure must be described with sufficient specificity to allow the applicant to determine whether to

(A) adopt the alternative measure;

(B) otherwise modify the project to achieve consistency with the enforceable policies of the ACMP; or

(C) abandon the project.

(i) If a project is modified under (h)(3)(B) of this section, or if the coordinating agency is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600, the coordinating agency, with the applicant's concurrence, may issue a revised proposed consistency determination.

(j) The coordinating agency may immediately issue a final consistency determination under 6 AAC 50.265 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under (h)(3) of this section. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.265. Final consistency determination. (a) A final consistency determination rendered in accordance with AS 44.19.145(a)(11) and AS 46.40.096(d)(4) must

(1) contain a description of the proposed project;

(2) contain a description of the scope of the project subject to consistency review;

(3) concur with or object to the applicant's consistency certification; and

(4) contain a statement that the final consistency determination is a final administrative order and decision under the ACMP.

(b) In addition to meeting the requirements in (a) of this section, a final consistency determination that

(1) concurs with the applicant's consistency certification must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP; or

(2) objects to the applicant's consistency certification must include

(A) an explanation of how the proposed project is inconsistent with the enforceable policies of the ACMP; and

(B) the identification of the specific enforceable policies and the reasons why the proposed project has been found inconsistent with those enforceable policies.

(c) In addition to meeting the requirements in (a) of this section, the final consistency determination must include any change made between issuance of the proposed consistency determination and issuance of the final consistency determination, including

(1) the incorporation, within the project description, of any

(A) alternative measures that are

(i) proposed under 6 AAC 50.260(h)(3) in the proposed consistency determination; and

(ii) adopted by the applicant; and

(B) modification by the applicant of the project to achieve consistency with the enforceable policies of the ACMP; and

(2) any minor editorial or technical corrections.

(d) The coordinating agency shall provide the final consistency determination to

(1) the applicant;

(2) each resource agency;

(3) each commenting review participant;

(4) each agency that commented on the project; and

(5) each person who submitted timely ACMP comments under 6 AAC 50.500(a)-

(b).

(e) If an applicant, after receiving a final consistency determination, fails to implement an alternative measure adopted under (c) of this section, or if the applicant undertakes a project modification not incorporated into the final consistency determination and not reviewed under 6 AAC 50.800 - 6 AAC 50.820, a resource agency may take enforcement action according to the resource agency's statutory and regulatory authorities, priorities, available resources, and preferred methods.

(f) A final consistency determination is a final administrative order and decision under the ACMP. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.270. Time for issuance of a final consistency determination. (a) The final consistency determination shall be issued on or before Day 30 in a 30-day consistency review or Day 50 in a 50-day consistency review, except as described in (b) of this section and 6 AAC 50.280(a).

(b) The final consistency determination shall be issued

(1) five days after the review participants receive the proposed consistency determination, if the coordinating agency does not receive a timely request for an elevation under 6 AAC 50.600(a);

(2) five days after the review participants receive a director-level proposed consistency determination under 6 AAC 50.600(h)(3), if an elevation to the resource agency commissioners is not requested under 6 AAC 50.600(i); or

(3) no later than 15 days after an elevation to the resource agency commissioners is requested under 6 AAC 50.600(b) or (i). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.275. Resource agency authorization. (a) A resource agency may not issue an authorization for an activity that is part of a project that is subject to a consistency review unless the coordinating agency issues a final consistency determination that concurs with the applicant's consistency certification.

(b) Following issuance of a final consistency determination, a resource agency may not include an additional alternative measure on its authorization.

(c) If a requirement set out in a project description under 6 AAC 50.265 is more or less restrictive than a similar requirement in a resource agency authorization, the applicant shall comply with the more restrictive requirement.

(d) Except for a disposal of interest in state land, if a final consistency determination concurs with the applicant's consistency certification, a resource agency shall issue an authorization necessary for a project within five days after the resource agency issues or receives the final consistency determination, unless the resource agency considers additional time to be necessary to fulfill the resource agency's statutory or regulatory requirements.

(e) If a final consistency determination concurs with the applicant's consistency certification, and after DNR issues or receives the final consistency determination, DNR will authorize a disposal of interest in state land at the time and in the manner provided by applicable statutory or regulatory requirements.

(f) If a project requires one or more authorizations from only a single resource agency, the resource agency may incorporate a consistency determination into the resource agency's authorization document for a project if, for the part of the document that is the consistency determination, a consistency review is conducted and the consistency determination is rendered in accordance with AS 46.40 and 6 AAC 50.200 - 6 AAC 50.280.

(g) Notwithstanding having concurred in a final consistency determination for a project, a resource agency may deny approval of an authorization application under that agency's own statutory and regulatory authorities. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.280. Consistency review schedule modification and termination. (a) The coordinating agency may modify the consistency review schedule under the following circumstances and for the time specified:

(1) the coordinating agency and a resource agency may agree to modify the review schedule as necessary to coordinate the consistency review with the resource agency's statutory or regulatory authorization review process, including a disposal of interest in state land, if the length of time for receipt of comments is at least as long as under 6 AAC 50.250;

(2) if the coordinating agency receives a request for additional information from a review participant under 6 AAC 50.245, the coordinating agency may modify the review schedule by up to three days to evaluate the request, and consult with other review participants with expertise or responsibility;

(3) if the coordinating agency requests additional information from the applicant under 6 AAC 50.245, the coordinating agency may modify the review schedule as necessary until the requesting review participant receives the information and considers it adequate within the timeframe identified under 6 AAC 50.245(e);

(4) the coordinating agency may modify the review schedule as necessary for a public hearing or public meeting that is held as part of

(A) a consistency review;

(B) a resource agency's review of a necessary authorization application;

or

(C) preparation of an affected coastal resource district's comments for submission to the coordinating agency;

(5) the coordinating agency may modify the review schedule as necessary for the adjudication process of an authorization issued by a coastal resource district exercising authority under AS 29, if the coastal resource district's consistency review comments under 6 AAC 50.255 are pending the results of the adjudication;

(6) the coordinating agency may extend the review schedule at the request of the applicant;

(7) the coordinating agency may modify the review schedule to address a question of law;

(8) the coordinating agency may modify the review schedule by up to five days for a resource agency or coastal resource district to consider timely submitted public comments;

(9) the coordinating agency may extend the comment deadline by up to 10 days for a project within a coastal resource service area;

(10) the coordinating agency may extend the review schedule by up to 10 days if a review participant requests time for a field review;

(11) the coordinating agency may modify the review schedule as necessary following distribution of the proposed consistency determination or response to await acknowledgment, by return receipt or another means of verification, that the applicant received the determination;

(12) if the coordinating agency issues a revised proposed consistency determination or response under 6 AAC 50.260(i) or 6 AAC 50.475(e), the coordinating agency may modify the review schedule by up to five days to allow for the submission of a request for elevation under 6 AAC 50.600;

(13) if the coordinating agency receives a request for elevation under 6 AAC 50.600, the coordinating agency shall suspend the review schedule by 15 days for each elevation.

(b) The coordinating agency shall notify the applicant and each review participant of a schedule modification and the reasons for the schedule modification.

(c) When the coordinating agency restarts a review that was suspended under this section, the day that the review is restarted shall be assigned the day of the review schedule on which the review was suspended.

(d) A resource agency may deny an authorization any time before, during, or after the consistency review has been completed. If an authorization is denied during a consistency

review, the coordinating agency and review participants may agree to suspend or terminate the consistency review. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096

Article 3. Consistency Review Process for Federal Activities.

Section

305. Applicability

316. Pre-review assistance for a federal agency

325. Federal consistency determination

335. Initiation of consistency review of a federal consistency determination

345. Request for additional information for a federal consistency determination

355. Comment deadline for a federal consistency determination, and review schedule modification or extension

365. Review participant comments regarding a federal consistency determination

375. Proposed consistency response to a federal consistency determination

380. Elevation and mediation of a proposed consistency response

385. Final consistency response to a federal consistency determination

390. Resource agency authorization

395. Process for a federal negative determination

6 AAC 50.305. Applicability. The consistency review process described in 6 AAC 50.305 - 6 AAC 50.395 applies to

(1) an activity if the activity requires

(A) a federal consistency determination; or

(B) an authorization from one or more resource agencies and a federal consistency determination;

(2) a federal general permit or nationwide permit proposed in accordance with 15 C.F.R. 930.31(d); or

(3) a general consistency determination provided in accordance with 15 C.F.R. 930.36(c). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.316. Pre-review assistance for a federal agency. At the request of a federal agency, DGC shall provide pre-review assistance in accordance with 6 AAC 50.215. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.325. Federal consistency determination. (a) Upon receipt of a federal consistency determination, DGC shall review it for completeness in accordance with the requirements of 15 C.F.R. 930.39(a), and shall immediately notify the federal agency if the determination is not complete.

(b) DGC may request that the federal agency provide additional copies of the consistency review packet, maps, or other documents that DGC cannot duplicate conveniently. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.335. Initiation of consistency review of a federal consistency

determination. (a) The consistency review process, as contained in 6 AAC 50.305 - 6 AAC 50.395, shall be initiated, coordinated, and completed within the timeframes specified in 15 C.F.R. 930.30 - 930.46.

(b) Upon receipt of a complete federal consistency determination for purposes of 6 AAC 50.325, DGC shall immediately initiate a consistency review as follows:

(1) DGC shall establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 6 AAC 50.500;

(2) on or before Day 3, DGC shall

(A) provide to the federal agency a notice that the consistency review has been initiated and a review schedule;

(B) provide to each review participant a copy of the federal consistency determination, supporting information, the review schedule with a solicitation for the review participants' comment, and a deadline for receipt of comment;

(C) provide a copy of the federal consistency determination and supporting information to a person requesting the information; and

(D) make a copy of the federal consistency determination and supporting information available for public inspection and copying at a public place in an area that the activity may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.160	AS 46.40.040	AS 46.40.096
	AS 44.19.161		

6 AAC 50.345. Request for additional information for a federal consistency

determination. (a) On or before Day 25 of the consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency determination.

(b) DGC may request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the federal agency additional information relevant to the proposed activity and appropriate in the context of the requestor's expertise or area of responsibility. If a request for additional information is submitted that is outside the requestor's expertise or area of responsibility, DGC shall consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the activity's consistency with the enforceable policies of the ACMP.

(d) Unless DGC and the federal agency agree that the federal agency may provide the requested information directly to the requestor, the federal agency shall provide the requested information to DGC. The federal agency shall provide sufficient copies of the requested

information to DGC for distribution to other interested review participants. DGC shall ensure that the requestor and other interested review participants receive the additional information.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is considered to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed to satisfy the original request or new issues raised in the response to the original request. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.355. Comment deadline for a federal consistency determination, and review schedule modification or extension. (a) DGC shall establish a 30-day comment deadline for receipt of public and review participant comment regarding a federal consistency determination.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), if the final consistency response is provided under 6 AAC 50.385 to the federal agency on or before the deadline set under 15 C.F.R. 930.41, including any extensions granted by the federal agency. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.160	AS 46.40.040	AS 46.40.096
	AS 44.19.161		

6 AAC 50.365. Review participant comments regarding a federal consistency determination. A comment submitted by a review participant must be in writing and must

(1) identify and explain why the review participant concurs with the federal consistency determination that the proposed activity will be undertaken in a manner consistent to the maximum extent practicable, for purposes of 15 C.F.R. 930.32, with the enforceable policies of the ACMP; or

(2) identify that the review participant objects to the federal consistency determination that the proposed activity will be undertaken in a manner consistent to the maximum extent practicable, for purposes of 15 C.F.R. 930.32, with the enforceable policies of the ACMP, and

(A) explain how the proposed activity is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and the reasons why the review participant considers the proposed activity inconsistent with those enforceable policies; and

(C) identify any alternative measure that, if adopted by the federal agency, would achieve consistency with the enforceable policies identified in accordance with (B) of this paragraph, and explain how that alternative measure would achieve consistency with those enforceable policies. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.375. Proposed consistency response to a federal consistency

determination. (a) DGC shall develop, in accordance with 6 AAC 50.260(a)-(d) and (j), a proposed consistency response to a federal consistency determination.

(b) On or before Day 44 of the consistency review, DGC shall provide a federal agency and the review participants with a proposed consistency response that

(1) contains a description of the proposed federal activity;

(2) contains a description of the scope of the federal activity subject to consistency review;

(3) indicates whether

(A) a concurrence is proposed with the federal consistency determination;

(B) an objection is proposed to the federal consistency determination; or

(C) DGC requests an extension for the consistency response; and

(4) contains a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(c) In addition to the requirements in (b) of this section, if a concurrence is proposed with the federal consistency determination, the proposed consistency response must include an evaluation of the activity against the applicable enforceable policies of the ACMP. In the evaluation, DGC may incorporate by reference the federal consistency determination, if the determination sufficiently supports the proposed concurrence.

(d) In addition to the requirements in (b) of this section, if an objection is proposed to the federal consistency determination, DGC shall provide the proposed objection and any proposed alternative measure in the form and manner required by 15 C.F.R. 930.43, and shall include a statement informing the federal agency of the availability of elevation under 6 AAC 50.600 and OCRM assistance under 15 C.F.R. 930.111 (OCRM Mediation) during the elevation.

(e) A proposed consistency response is not the final response for purposes of 15 C.F.R. 930.41(a), and is subject to elevation under 6 AAC 50.600. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.380. Elevation and mediation of a proposed consistency response. If a federal agency requests, under 6 AAC 50.600, an elevation of the proposed consistency response, the federal agency or DGC may request that OCRM, under 15 C.F.R. 930.111 (OCRM Mediation), assist in the elevation. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.385. Final consistency response to a federal consistency determination.

(a) A final consistency response rendered in accordance with AS 44.19.145(a)(11) and AS 46.40.096(d)(4) must

(1) contain a description of the proposed activity;

(2) contain a description of the scope of the activity subject to consistency review; and

(3) concur with or object to the federal consistency determination.

(b) In addition to meeting the requirements in (a) of this section, a final consistency response that

(1) concurs with the federal consistency determination must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP; in the evaluation, DGC may incorporate by reference the federal consistency determination, if the determination sufficiently supports the proposed concurrence; or

(2) objects to the federal consistency determination must set out that objection in the form and manner required by 15 C.F.R. 930.43, and must include a statement informing the federal agency of the availability of mediation through the United States Secretary of Commerce under 15 C.F.R. 930.112 - 930.116.

(c) In addition to meeting the requirements of (a) of this section, the final consistency response must include any change made between issuance of the proposed consistency response and issuance of the final consistency response, including

(1) the incorporation, within the project description, of any

(A) alternative measures that are

(i) proposed under 6 AAC 50.375(d) in the proposed consistency response; and

(ii) adopted by the federal agency; and

(B) modification by the federal agency of the activity to achieve consistency with the enforceable policies of the ACMP; and

(2) any minor editorial or technical corrections.

(d) On or before Day 50 of the consistency review, except as provided under 6 AAC 50.355, DGC shall provide the final consistency response to

(1) the federal agency as required under 15 C.F.R. 930.41;

(2) the director of OCRM, as required under 15 C.F.R. 930.43(c), if the final consistency response objects to the federal consistency determination;

(3) each resource agency;

(4) each commenting review participant;

(5) each agency that commented on the activity; and

(6) each person who submitted timely ACMP comments under 6 AAC 50.500(a)-

(b). (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.390. Resource agency authorization. For an activity that requires a federal consistency determination and an authorization from one or more resource agencies,

(1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process so that the consistency review can be completed within the timeframes specified in 15 C.F.R. 930.30 - 930.46; and

(2) if a federal agency seeks mediation from the United States Secretary of Commerce under 15 C.F.R. 930.112 - 930.116, a resource agency may not issue an authorization until mediation is concluded; consistent with any policy direction given by the commissioners of the resource agencies or the governor, DGC may amend a final consistency response to reflect the outcome of the mediation process. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.395. Process for a federal negative determination. (a) If DGC receives a negative determination in accordance with 15 C.F.R. 930.35, DGC shall solicit comments regarding concurrence or objection to the negative determination from each resource agency and any potentially affected coastal resource district. DGC shall establish the deadline for receipt of comment as appropriate based on the scope and complexity of the activity.

(b) Within 60 days after receipt of a negative determination in accordance with 15 C.F.R. 930.35, DGC shall

- (1) concur with the federal negative determination;
- (2) object to the federal negative determination; or
- (3) request, in writing, an extension for the state response.

(c) If an objection is made to a negative determination, the federal agency and DGC shall follow the process in 15 C.F.R. 930.35(c). (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

Article 4. Consistency Review Process for Activities Requiring a Federal Authorization.

Section

405. Activities requiring a federal authorization subject to consistency review

415. Pre-review assistance for an applicant for a federal authorization

425. Consistency certification for a federal authorization

435. Initiation of consistency review for a federal consistency certification

445. Request for additional information for a federal consistency certification

455. Comment deadline for a federal consistency certification, and review schedule modifications and extensions

465. Review participant comments regarding a federal consistency certification

475. Proposed consistency response to a federal consistency certification

485. Final consistency response to a federal consistency certification

490. Resource agency authorization

495. Review process for OCS exploration, development, and production activities

6 AAC 50.405. Activities requiring a federal authorization subject to consistency review. (a) The consistency review process described in 6 AAC 50.405 - 6 AAC 50.495 applies to a project if the project requires

- (1) a federal consistency certification; or
- (2) an authorization from one or more resource agencies and a federal consistency certification.

(b) For purposes of 15 C.F.R. 930.53(a), federal authorizations subject to consistency review include

permit (1) a United States Department of Agriculture, United States Forest Service

(A) required under 36 C.F.R. Part 251 for outfitter and guide operations for freshwater boat trips that include a designated area for exclusive commercial use by the permit holder;

(B) for mining plans of operation required under 36 C.F.R. 228.4 - 228.8, and that require an environmental assessment or environmental impact statement under 42 U.S.C. 4332 (National Environmental Policy Act);

(C) required under 36 C.F.R. 228.58 - 228.61 for mineral material sales and sites, if those sales and sites are greater than five acres or not previously reviewed;

(D) required under 36 C.F.R. Part 251 for a hotel, a motel, a resort, a service station, a fish hatchery, mariculture, a liquid waste disposal area, a sewage transmission line, hydroelectric projects, oil and gas pipelines, an airport, a heliport, a dam, a reservoir, water transmission, a fish ladder, power lines, telephone lines, or a water easement; or

(E) for ground disturbing construction that require one or more of the following:

(i) an environmental assessment or environmental impact statement under 42 U.S.C. 4332 (National Environmental Policy Act);

(ii) a permit from the United States Environmental Protection Agency under 33 U.S.C. 1342 (sec. 402 of the Clean Water Act);

(iii) a permit from the United States Department of Defense, Army Corps of Engineers, under 33 U.S.C. 1344 (sec. 404 of the Clean Water Act);

(iv) an authorization from the Department of Environmental Conservation under 18 AAC 50, 18 AAC 60, 18 AAC 70, or 18 AAC 72 with respect to air emissions, solid waste, or wastewater;

(v) an authorization from the Department of Fish and Game under AS 16.05.840 or 16.05.870;

(vi) a DNR water rights or tidelands authorization under AS 46.15.010 - 46.15.160 and 11 AAC 93.040 - 11 AAC 93.130;

(2) a permit from the United States Secretary of Commerce under 33 U.S.C. 1441, for activities in a national marine sanctuary;

(3) a permit from the United States Department of Defense, Army Corps of Engineers,

(A) under 33 U.S.C. 401 and 403 (secs. 9 and 10 of the Rivers and Harbors Act), authorizing the construction of bridges, causeways, dams, and dikes, and the obstruction of navigable waters;

(B) under 43 U.S.C. 1333 (sec. 4 of the Outer Continental Shelf Lands Act), authorizing artificial islands or fixed structures on the outer continental shelf;

(C) under 33 U.S.C. 1413 (sec. 103 of the Marine Protection Research and Sanctuaries Act), authorizing ocean dumping outside the limits of the territorial sea; or

(D) under 33 U.S.C. 1344 (sec. 404 of the Clean Water Act), authorizing discharges of dredged or fill material into navigable waters;

(4) a United States Department of Energy, Federal Energy Regulatory Commission

(A) license for the construction and operation of non-federal hydroelectric projects and associated transmission lines under 16 U.S.C. 797(e) and 808 (secs. 4(e) and 15 of the Federal Power Act);

(B) order for interconnection of electric transmission facilities under 16 U.S.C. 824a(b) (sec. 202(b) of the Federal Power Act);

(C) permission and approval for the abandonment of natural gas pipeline facilities under 15 U.S.C. 717f(b) (sec. 7(b) of the Natural Gas Act); or

(D) certificate of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under 15 U.S.C. 717f(c) (sec. 7(c) of the Natural Gas Act);

(5) a United States Environmental Protection Agency

(A) permit required under 33 U.S.C. 1342 (sec. 402 of the Clean Water Act), authorizing discharge of pollutants into navigable waters;

(B) permit required under 33 U.S.C. 1345 (sec. 405 of the Clean Water Act), authorizing disposal of sewage sludge;

(C) permit under 40 C.F.R. Part 63 for new sources or for modification of existing sources, or a waiver of compliance allowing extensions of time to meet air quality standards under 42 U.S.C. 7412(c)(1) (sec. 112(c)(1) of the Clean Air Act); or

(D) air quality exemption granted under 40 C.F.R. 60.14 or 40 C.F.R. 64.2 for stationary sources;

(6) a United States Department of the Interior,

(A) Bureau of Land Management permit and license under 43 C.F.R. Part 2920, for drilling and mining and related facilities on public lands;

(B) Bureau of Land Management permit under 43 C.F.R. 2800.0-1 - 2808.6, for pipeline rights-of-way on public lands;

(C) Bureau of Land Management permit and license under 43 C.F.R. 2800.0-1 - 2808.6, for rights-of-way on public lands; or

(D) Minerals Management Service OCS plans within the meaning given in 15 C.F.R. 930.73;

(7) a United States Nuclear Regulatory Commission permit and license for the

(A) siting of nuclear facilities under 10 C.F.R. Part 52;

(B) construction of nuclear facilities under 10 C.F.R. Part 52; or

(C) operation of nuclear facilities under 10 C.F.R. Parts 54-55; and

(8) a United States Department of Transportation, United States Coast Guard permit under

(A) 33 U.S.C. 401 (sec. 9 of the Rivers and Harbors Act) and 33 C.F.R. Part 321, for construction or modification of bridge structures and causeways across navigable waters;

(B) 33 U.S.C. 1501- 1524, for siting, construction, and operation of deepwater ports; or

(C) 33 U.S.C. 401 (sec. 9 of the Rivers and Harbors Act), authorizing the obstruction of navigable waters.

(b) In accordance with 15 C.F.R. 930.54, DGC may notify a federal agency, the applicant, and the director of OCRM of unlisted federal license or permit activities affecting any coastal use or resource that require a consistency review. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.415. Pre-review assistance for an applicant for a federal authorization.

At the request of an applicant for a federal authorization, DGC shall provide pre-review assistance in accordance with 6 AAC 50.215. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.425. Consistency certification for a federal authorization. (a) In accordance with 15 C.F.R. 930.50 - 930.66, an applicant for a federal authorization subject to consistency review under the ACMP must provide in the application to the federal authorizing agency a certification that the project complies with and will be conducted in a manner consistent with the ACMP. The applicant must provide a copy of the certification to DGC along with the necessary data and information identified in (c) of this section.

(b) Except as provided in AS 46.14.160, DGC shall, within 14 days after receipt of a consistency determination, review the information and data for completeness in accordance with the requirements of (c) of this section, and shall notify the applicant if the information and data are not complete.

(c) To be complete, a consistency certification must include a completed coastal project questionnaire that includes

(1) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource;

(2) data and information sufficient to support the consistency certification required by 15 C.F.R. 930.57;

(3) maps, diagrams, technical data, and other relevant material that precisely describe the project site location, topographical information, township, range, section, meridian, and other site-specific information;

(4) the consistency certification required by 15 C.F.R. 930.57; the consistency certification must include a statement using the following language: “The proposed project complies with the applicable enforceable policies of the Alaska coastal management program and will be conducted in a manner consistent with the program”;

(5) a signature and the date signed;

(6) copies of all resource agency authorization applications required for the project, except as provided in (g) of this section; each application must meet the authorizing resource agency’s statutory and regulatory requirements for completeness; and

(7) completed copies of all necessary federal authorization applications.

(d) If an applicant fails to submit a complete consistency certification, DGC shall notify the applicant and the federal agency in accordance with 15 C.F.R. 930.60.

(e) DGC, on its own initiative or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet, maps, or other documents that DGC, the coastal resource district, or the resource agency cannot duplicate conveniently.

(f) If a resource agency requires a fee for its authorization, an applicant must submit that fee directly to the resource agency.

(g) An applicant must submit, directly to the agency responsible for issuing the authorization, an application for a resource agency or federal authorization requiring information that must be held in confidence by law. A resource agency shall forward to DGC a copy of the application with the confidential information deleted, as appropriate. The applicant shall arrange with the federal agency for a copy of the application, with the confidential information deleted, as appropriate, to be forwarded to DGC. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.435. Initiation of consistency review for a federal consistency certification. Within 14 days after receipt of a complete consistency certification, or within 14 days after a notification under 15 C.F.R. 930.60(a)(1)(ii), DGC shall initiate a consistency review as follows:

(1) DGC shall establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 6 AAC 50.500;

(2) on or before Day 3, DGC shall

(A) provide to the applicant and federal authorizing agency a notice that the consistency review has been initiated and a review schedule;

(B) provide to each review participant a copy of the consistency certification, supporting information, the review schedule with a solicitation for review participants' comments, and a deadline for receipt of comment;

(C) provide a copy of the consistency certification and supporting information to a person requesting the information; and

(D) make a copy of the consistency certification and supporting information available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely to be an affected coastal resource district. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.445. Request for additional information for a federal consistency certification. (a) On or before Day 25 of the consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency certification.

(b) DGC may, on or before Day 25 of the consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the applicant additional information relevant to the proposed project and appropriate in the context of the requestor's expertise or area of responsibility. If a request for additional information is submitted that is outside the requestor's expertise or area of responsibility, DGC shall consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) Unless DGC and the applicant agree that the applicant may provide the requested information directly to the requestor, the applicant shall provide the requested information to DGC. The applicant shall provide sufficient copies of the requested information to DGC for distribution to other interested review participants. DGC shall ensure that the requestor and other interested review participants receive the additional information.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is considered to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information needed to satisfy the original request or new issues raised in the response to the original request. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.455. Comment deadline for a federal consistency certification, and review schedule modifications and extensions. (a) Except as provided under 6 AAC 50.280(a), DGC shall establish a 30-day comment deadline for receipt of public and review participant comment regarding a federal consistency certification.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), if the final consistency response is provided under 6 AAC 50.485 to the federal agency on or before the deadline set under 16 U.S.C. 1456(c)(3)(A) (sec. 307(c)(3)(A) of the Coastal Zone Management Act).

(c) If DGC has not issued a proposed consistency response within three months after receipt of a complete consistency certification, DGC shall notify the applicant and federal agency of the status of the consistency review and the reason for further delay.

(d) DGC and an applicant may mutually agree, in accordance with 15 C.F.R. 930.60(a)(3), to stay the consistency review or extend the six-month federal review period. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.465. Review participant comments regarding a federal consistency certification. (a) A comment submitted by a review participant must be in writing and must

(1) identify and explain why the review participant concurs with the applicant's federal consistency certification; or

(2) identify that the review participant objects to the applicant's federal consistency certification, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and the reasons why the review participant considers the proposed project inconsistent with those enforceable policies; and

(C) identify any alternative measure that, if adopted by the applicant, would achieve consistency with the specific enforceable policies identified in accordance with (B) of this paragraph, and explain how that alternative measure would achieve consistency with those specific enforceable policies.

(b) In its consistency review comment, a review participant may address an enforceable policy outside the review participant's expertise or area of responsibility. DGC may not give a resource agency or coastal resource district due deference outside that agency's or district's expertise or area of responsibility.

(c) DGC shall send the applicant, each resource agency, and any potentially affected coastal resource district, or ensure that those persons receive a copy of timely submitted comments. Upon request, DGC shall send other persons interested in the project, or ensure that other persons interested in the project receive, a copy of the comments. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145
AS 44.19.160

AS 44.19.161
AS 46.40.040

AS 46.40.096

6 AAC 50.475. Proposed consistency response to a federal consistency certification.

(a) DGC shall develop, in accordance with 6 AAC 50.260(a)-(d) and (j), a proposed consistency response to a federal consistency certification.

(b) On or before Day 44 of the consistency review, DGC shall provide the applicant, the federal agency, each review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(b) with a proposed consistency response that

(1) contains a description of the proposed project;

(2) contains a description of the scope of the project subject to consistency review;

(3) indicates whether

(A) a concurrence is proposed with the applicant's federal consistency certification; or

(B) an objection is proposed to the applicant's federal consistency certification; and

(4) contains a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(c) In addition to the requirements in (b) of this section, if a concurrence is proposed with the applicant's federal consistency certification, the proposed consistency response must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP.

(d) In addition to the requirements in (b) of this section, if an objection is proposed to the applicant's federal consistency certification, DGC shall provide the proposed objection and any proposed alternative measure in the form and manner required by 15 C.F.R. 930.63(a)-(d). Any proposed alternative measure must include an explanation of how the alternative measure would achieve consistency with the applicable enforceable policies of the ACMP. The alternative measure must be described with sufficient specificity to allow the applicant to determine whether to

- (1) adopt the alternative measure;
- (2) otherwise modify the project to achieve consistency with the enforceable policies of the ACMP;
- (3) abandon the project; or
- (4) file an appeal under 15 C.F.R. 930.120 - 930.132.

(e) DGC, with the applicant's concurrence, may issue a revised proposed consistency response

- (1) based upon a project modification developed under (d)(2) of this section; or
- (2) if DGC is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600.

(f) DGC may immediately issue a final consistency response under 6 AAC 50.485 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under 15 C.F.R. 930.63.

(g) A proposed consistency response is not the final response for purposes of 15 C.F.R. 930.62 - 930.63, and is subject to elevation under 6 AAC 50.600. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.485. Final consistency response to a federal consistency certification.

(a) A final consistency response rendered in accordance with AS 44.19.145(a)(11) and AS 46.40.096(d)(4) must

- (1) contain a description of the proposed activity;
- (2) contain a description of the scope of the activity subject to consistency review; and
- (3) concur with or object to the applicant's federal consistency certification.

(b) In addition to meeting the requirements in (a) of this section, a final consistency response that

- (1) concurs with the applicant's federal consistency certification must include an evaluation of the proposed project against the applicable enforceable policies of the ACMP; or
- (2) objects to the applicant's federal consistency certification must set out that objection in the form and manner required by 15 C.F.R. 930.63.

(c) In addition to meeting the requirements in (a) of this section, the final consistency response must include any change made between issuance of the proposed consistency response and issuance of the final consistency response, including

- (1) the incorporation, within the project description, of any
 - (A) alternative measures that are

- (i) proposed under 6 AAC 50.475(d) in the proposed consistency response; and
- (ii) adopted by the applicant; and
- (B) modification by the applicant of the project to achieve consistency with the enforceable policies of the ACMP; and
- (2) any minor editorial or technical corrections.
- (d) Within 50 days after receipt of the applicant's federal consistency certification, except as provided under 6 AAC 50.455, DGC shall provide the final consistency response to
 - (1) the applicant;
 - (2) the federal agency as required under 15 C.F.R. 930.62(a) and 15 C.F.R. 930.63(a);
 - (3) the director of OCRM, as required under 15 C.F.R. 930.63(a), if the final consistency response objects to the applicant's federal consistency certification;
 - (4) each resource agency;
 - (5) each commenting review participant;
 - (6) each agency that commented on the project; and
 - (7) each person who submitted timely ACMP comments under 6 AAC 50.500(a)-
- (b).
- (e) If an applicant, after receiving a final consistency response, fails to implement an alternative measure adopted under (c) of this section, or if the applicant undertakes a project modification not incorporated into the final consistency response and not reviewed under 6 AAC 50.800 - 6 AAC 50.820, a resource agency may take enforcement action according to the resource agency's statutory and regulatory authorities, priorities, available resources, and preferred methods. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.490. Resource agency authorization. For a proposed project that requires a federal consistency certification and an authorization from one or more resource agencies,

- (1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process so that the consistency review can be completed within the timeframes specified in 16 U.S.C. 1456(c)(3)(A) and 15 C.F.R. 930.50 - 930.66; and
- (2) if an applicant appeals a consistency response to the United States Secretary of Commerce under 15 C.F.R. 930.120 - 930.131, a resource agency may not issue an authorization necessary for the project until the appeal is decided; consistent with any policy direction given by the commissioners of the resource agencies or the governor, DGC may amend a final consistency response to reflect the outcome of the appeal. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.495. Review process for OCS exploration, development, and production activities. A consistency review for federal license or permit activities described in detail within an OCS plan, within the meaning given in 15 C.F.R. 930.71 and 930.73, shall be conducted in

accordance with the requirements of 15 C.F.R. 930.70 - 930.85 and 6 AAC 50.415 - 6 AAC 50.490. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

Article 5. Public Participation.

Section

500. Public notice

510. Public comments

520. Public hearings

6 AAC 50.500. Public notice. (a) Public notice must be provided for the consistency review of a project.

(b) To provide sufficient public notice of a consistency review, a notice must

(1) comply with the requirements of AS 46.40.096(c);

(2) solicit comments to be addressed and submitted to the coordinating agency regarding the project's consistency with the enforceable policies of the ACMP;

(3) specify the deadline for receipt of comments by the coordinating agency;

(4) identify, to the extent known at the time the notice is issued, each public place at which copies of the consistency review packet and review schedule will be available for public inspection and copying, if the coordinating agency makes them available under 6 AAC 50.240(d)(4), 6 AAC 50.335(b)(2)(D), or 6 AAC 50.435(2)(D);

(5) be issued by at least one of the following methods:

(A) publication in a newspaper of general circulation within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect;

(B) posting

(i) on an Internet web site dedicated to consistency review public notices; and

(ii) in at least three public places within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect; however, notwithstanding the requirement of this sub-subparagraph, public notice may be posted in no less than one public place if the coordinating agency determines the area likely to be affected to have a population of 1,000 or fewer residents, and if the coordinating agency consults with any affected coastal resource district in which the area is located; and

(6) be provided by mail, or by electronic format if the person agrees, to each person who has requested from the coordinating agency public notice of

(A) the proposed project; or

(B) any proposed project affecting a specific coastal resource district.

(c) A coordinating agency may issue a joint public notice of a consistency review with other state or federal agencies if that notice complies with the minimum requirements of this

section. To the extent feasible, and in cooperation with the state or federal agency, the coordinating agency shall ensure that the joint public notice includes a

(1) reference to the agency's authorization; and

(2) solicitation of comments on the agency's authorization, distinct from the solicitation of ACMP comments.

(d) If a public notice of a consistency review is issued that does not comply with the minimum requirements of this section, the coordinating agency shall issue a supplemental notice that does comply. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.040

AS 46.40.096

6 AAC 50.510. Public comments. (a) A person may comment on the consistency of a project by submitting written comments addressed directly to the coordinating agency on or before the comment deadline established under 6 AAC 50.250, 6 AAC 50.355, or 6 AAC 50.455, as applicable, or by presenting oral or written comment to the coordinating agency at a public hearing that the coordinating agency schedules and holds under 6 AAC 50.520.

(b) If a person contends that a project is inconsistent with an enforceable policy of the ACMP, the oral or written comment must identify the enforceable policy and explain how the project is inconsistent with the policy.

(c) To be considered, comments must comply with (a) and (b) of this section.

(d) The coordinating agency shall send the applicant, each resource agency, and any potentially affected coastal resource district, or shall ensure that they receive, a copy of timely submitted comments and, if the coordinating agency holds a public hearing under 6 AAC 50.520, the summary of the comments prepared under 6 AAC 50.520(d). Upon request, the coordinating agency shall send a copy of the comments to other persons interested in the project.

(e) For a timely submitted comment, the coordinating agency may consult with the resource agency or coastal resource district with expertise or responsibility to consider the comment. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.040

AS 46.40.096

6 AAC 50.520. Public hearings. (a) The coordinating agency shall schedule and hold a public hearing in an area that the coordinating agency considers a project will likely affect if the coordinating agency

(1) receives a written request for a public hearing regarding the project no later than

(A) Day 17 in a 30-day review; or

(B) Day 30 in a 50-day review; and

(2) finds that the request is based on facts or information

(A) relevant to the project's consistency with an enforceable policy of the ACMP; and

(B) that would not otherwise be available in the consistency review.

(b) Within seven days after receiving a request under (a) of this section, the coordinating agency shall

(1) decide whether to hold a public hearing; and

(2) notify the requestor if the coordinating agency will accept the request under (a) of this section.

(c) At least 15 days but no more than 30 days before the date of a public hearing scheduled under (a) of this section, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper of general circulation in the area the project is likely to affect;

(2) by written notice to the governing body of an affected coastal resource district and any authorizing resource agencies; and

(3) if the project is to be located in the unorganized borough, by radio or television broadcast to the area the project is likely to affect.

(d) If a comment at a public hearing held under this section presents a new issue or information that the review participants have not already considered, the coordinating agency shall summarize any ACMP comment and distribute the summary to each review participant and the applicant within five days after the hearing. A review participant or the applicant may submit a written response to the summary, if the coordinating agency receives the response within seven days after distribution of the summary.

(e) If a resource agency or an affected coastal resource district holds a public hearing as part of its permit process under its authority or to develop its consistency review comments, the coordinating agency may consider a comment received at the hearing as part of the consistency review if

(1) the comment meets the requirements of 6 AAC 50.510(a)-(c);

(2) with respect to a resource agency hearing, the resource agency holds the hearing jointly with the coordinating agency; and

(3) the coordinating agency receives the comment from the resource agency or the affected coastal resource district on or before the comment deadline established under 6 AAC 50.250.

(f) DGC may, at the request of a resource agency coordinating a public hearing under this section, assist the resource agency in implementing the public hearing requirements under this section. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.040 AS 46.40.096

Article 6. Elevation and Petition.

Section

600. Elevation process

610. Petitions to the council

620. General hearing procedures on petitions

6 AAC 50.600. Elevation process. (a) If a resource agency, applicant, or affected coastal resource district does not concur with the proposed consistency determination or response, it may request an elevation to the resource agencies of the proposed consistency determination or response.

(b) At the request of a resource agency, applicant, or affected coastal resource district, the coordinating agency may proceed directly to a commissioner-level elevation under (j) - (l) of this section.

(c) An elevation is limited to consideration of

(1) the proposed consistency determination or response regarding whether the project is consistent with the enforceable policies of the ACMP; or

(2) any alternative measure or other project modification that would achieve consistency with the enforceable policies of the ACMP.

(d) A request for elevation must

(1) be in writing;

(2) be received by the coordinating agency within five days after the requestor receives the proposed consistency determination or response; and

(3) explain the requestor's concern, including any addition of or modification to an alternative measure identified that would achieve consistency with the enforceable policies of the ACMP.

(e) Upon receipt of a request for elevation in accordance with (a), (c), and (d) of this section, the coordinating agency shall

(1) distribute the request for elevation to each review participant, the applicant, and each person who submitted timely comments;

(2) suspend the review schedule by 15 days; and

(3) arrange and facilitate a meeting among the requestor and at least one director or delegate of that director from each resource agency.

(f) The coordinating agency shall invite the resource agencies, the applicant, and any affected coastal resource district to participate in, and may invite any other affected person to attend, the meeting arranged under (e) of this section.

(g) Only the participating directors from the resource agencies or the directors' delegates may make a final decision on an elevation requested under (a) of this section.

(h) Within the 15 days identified in (e)(2) of this section, the coordinating agency shall

(1) attempt to resolve the disputed issue given the policy direction provided by the participating directors from the resource agencies or the directors' delegates;

(2) render a director-level proposed consistency determination or response that reflects the decision of participating directors from the resource agencies or the directors' delegates; and

(3) distribute the director-level proposed consistency determination or response to each review participant, the applicant, and each person who submitted timely ACMP comments.

(i) If a resource agency, project applicant, or affected coastal resource district does not concur with the director-level proposed consistency determination or response rendered under (h) of this section, it may request, in the format required by (d) of this section, an elevation to the resource agency commissioners of the director-level proposed consistency determination or response.

(j) An elevation to the resource agency commissioners received under (b) or (i) of this section shall be conducted in the manner set out in (c), (e), and (f) of this section.

(k) Only resource agency commissioners or their delegates may make a final decision on an elevation requested under (b) or (i) of this section.

(l) Within 15 days after receipt of the request for elevation under (b) or (i) of this section, the coordinating agency shall

(1) attempt to resolve the disputed issue given the policy direction provided by the resource agency commissioners or their delegates;

(2) render a final consistency determination or response that reflects the decision of the resource agency commissioners or their delegates and that is consistent with any policy direction given by the commissioners of the resource agencies or the governor; and

(3) distribute the final consistency determination or response to each review participant, the applicant, and each person who submitted timely ACMP comments. (Eff.

1/21/2003, Register 164)

Authority: AS 44.19.145
AS 44.19.160

AS 44.19.161
AS 46.40.040

AS 46.40.096

6 AAC 50.610. Petitions to the council. (a) A petition under AS 46.40.100 must be submitted in writing to DGC. The petition must

(1) include the petitioner's name, mailing address, and street address, and must also include a telephone number, and any facsimile number, at which the petitioner may be reached;

(2) specify whether the petitioner is a coastal resource district, a citizen of the coastal resource district, or a state resource agency;

(3) include a list of points that the person intends to argue in the petition;

(4) explain how the approved program of the coastal resource district is not being implemented; and

(5) suggest an alternative action that will implement the approved program of the coastal resource district.

(b) DGC shall prepare and submit to the council, and any affected coastal resource district, draft written findings and a draft written decision. The council may adopt as its findings and decision the draft findings and decision from DGC. The council may order that the coastal resource district or state resource agency take any action with respect to future implementation of the district's coastal management program.

(c) Within five days after the decision by the council, DGC shall distribute the decision to

(1) the petitioner;

(2) the coastal resource district whose district coastal management program was the subject of the petition; and

(3) each state agency and person whom DGC identifies as having an interest in the petition.

(d) The effective date of a council decision is the date DGC distributes the decision. As of the date of distribution, the council decision is a final administrative decision under the ACMP. (Eff. 1/21/2003, Register 164)

Authority: AS 46.40.100

6 AAC 50.620. General hearing procedures on petitions. (a) A petition hearing may be conducted by teleconference.

(b) The council may conduct a petition hearing by establishing a quorum of council members to conduct the hearing and make a decision. If a quorum cannot be established before the hearing date, the council may assign at least one council member to preside over the hearing, and will establish a quorum of council members at a later date to make a decision. Before making a decision at a later date, participating council members who did not attend the hearing will review the tape or transcript of the hearing and the documentary evidence presented at the hearing.

(c) The council will convene a hearing to consider a petition during the next scheduled council meeting or within 60 days, unless all parties to the hearing agree to a reasonable time extension. In a hearing held on a petition,

- (1) the burden of proof is on the petitioner;
- (2) the council will allow admission of material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs; and
- (3) formal rules of evidence need not apply. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.160 AS 44.19.161 AS 46.40.100

Article 7. General and Nationwide Permits, Categorically Consistent Determinations, and General Consistency Determinations.

Section

- 700. Use of general and nationwide permits, categorically consistent determinations, and general consistency determinations in project consistency reviews**
- 710. Review process for categorically consistent determinations for activities that require a resource agency authorization**
- 720. Implementation of categorically consistent determinations for activities that require a resource agency authorization**
- 730. Review process for general consistency determinations for activities that require a resource agency authorization**
- 740. Implementation of general consistency determinations for activities that require a resource agency authorization**
- 750. Activities generally subject to individual consistency review**
- 760. Review process for resource agency general permits**
- 770. Review process for a federal general permit and nationwide permit**
- 780. General consistency determinations for federal activities**

6 AAC 50.700. Use of general and nationwide permits, categorically consistent determinations, and general consistency determinations, in project consistency reviews. (a) If an activity that is part of a project is authorized by a general or nationwide permit that was previously evaluated and found consistent with the enforceable policies of the ACMP, the scope of the project subject to review may exclude the activity authorized by the general or nationwide permit in accordance with AS 46.40.096(h).

(b) If all activities of a project are subject to a categorical or general consistency determination under 6 AAC 50.700 - 6 AAC 50.780, the project is not subject to additional consistency review.

(c) If an activity that is part of a project is subject to a categorical or general consistency determination under 6 AAC 50.700 - 6 AAC 50.780, and the project includes an activity that requires an individual consistency review, all activities shall be included in the scope of a project subject to review except as permitted under (d) of this section.

(d) If a project includes an activity that is subject to a categorical or general consistency determination under 6 AAC 50.700 - 6 AAC 50.780, the coordinating agency, with the concurrence of the resource agencies and affected coastal resource district, may exclude the activity from the scope of the project subject to a consistency review if the impact of the activity, when in compliance with the categorical or general consistency determination, has a temporary and de minimis impact to coastal uses and resources. An activity excluded from a consistency review may be authorized by an authorizing resource agency subject to the standard alternative measures in the general consistency determination.

(e) DGC shall develop and maintain a list of general and nationwide permits, categorically consistent determinations, and general consistency determinations. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.710. Review process for categorically consistent determinations for activities that require a resource agency authorization. (a) DGC, a resource agency, or a coastal resource district may propose under this section

(1) a categorically consistent determination for an activity that requires a resource agency authorization; or

(2) an amendment to an existing categorically consistent determination, based on new information regarding the impacts of the activity, including cumulative impacts.

(b) To be eligible for a categorically consistent determination under this section, an activity that requires a resource agency authorization may have only a de minimis impact on coastal uses and resources.

(c) DGC shall develop and maintain a list of categorically consistent determinations (the "A" list).

(d) A categorically consistent determination must

(1) identify the resource agency authorization required for the activity; and

(2) specifically describe the activity subject to the determination.

(e) If a new categorically consistent determination or an amendment to an existing determination is proposed, DGC shall

(1) distribute the proposed categorically consistent determination or amendment to the review participants;

(2) provide public notice of the proposed categorically consistent determination or amendment in accordance with 6 AAC 50.500; and

(3) in accordance with 6 AAC 50.235 - 6 AAC 50.280, render a consistency determination for the proposed categorically consistent determination or amendment. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.720. Implementation of categorically consistent determinations for activities that require a resource agency authorization. (a) An applicant for an activity subject to a categorically consistent determination under 6 AAC 50.710 must submit a completed coastal project questionnaire to the authorizing resource agency unless the categorically consistent determination specifically states that a coastal project questionnaire is not needed.

(b) The authorizing resource agency shall review the authorization application and coastal project questionnaire.

(c) An activity that meets the description in the categorically consistent determination is not subject to further consistency review, unless the

(1) coastal project questionnaire indicates an authorization is needed for an additional activity that is part of the project; and

(2) additional activity is not subject to a

(A) categorically consistent determination under 6 AAC 50.710; or

(B) general consistency determination under 6 AAC 50.730.

(Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.730. Review process for general consistency determinations for activities that require a resource agency authorization. (a) DGC, a resource agency, or a coastal resource district may propose under this section

(1) a general consistency determination for an activity that requires a resource agency authorization; or

(2) an amendment to an existing general consistency determination, based on new information regarding the impacts of the activity, including cumulative impacts.

(b) To be eligible for a general consistency determination under this section, an activity that requires a resource agency authorization must be an activity that can be made consistent with the ACMP through application of standard alternative measures.

(c) DGC shall develop and maintain a list of general consistency determinations (the “B” list).

(d) A general consistency determination must

(1) identify the resource agency authorization required for the activity;

(2) specifically describe the activity subject to the determination; and

(3) set out standard alternative measures that would achieve consistency with the enforceable policies of the ACMP.

(e) If a new general consistency determination or an amendment to an existing determination is proposed, DGC shall

(1) distribute the proposed general consistency determination or amendment to the review participants;

(2) provide public notice of the proposed general consistency determination or amendment in accordance with 6 AAC 50.500; and

(3) in accordance with 6 AAC 50.235 - 6 AAC 50.280, render a consistency determination for the proposed general consistency determination. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145
AS 44.19.160

AS 44.19.161
AS 46.40.040

AS 46.40.096

6 AAC 50.740. Implementation of general consistency determinations for activities that require a resource agency authorization. (a) An applicant for an activity subject to a general consistency determination under 6 AAC 50.730 must submit a completed coastal project questionnaire to the authorizing resource agency unless the general consistency determination specifically states that a completed coastal project questionnaire is not needed.

(b) The authorizing resource agency shall review the authorizing application and coastal project questionnaire.

(c) An activity that meets the description in the general consistency determination is not subject to further consistency review, unless the

(1) coastal project questionnaire indicates an authorization is needed for an additional activity that is part of the project; and

(2) additional activity is not subject to a

(A) categorically consistent determination under 6 AAC 50.710; or

(B) general consistency determination under 6 AAC 50.730.

(d) A resource agency authorization for an activity that is consistent based on a general consistency determination may not be issued unless the applicant adopts the alternative measures identified in the general consistency determination that would achieve consistency with the enforceable policies of the ACMP. The applicant shall submit to the coordinating agency, in writing, a statement adopting the alternative measures as part of the project description. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145
AS 44.19.160

AS 44.19.161
AS 46.40.040

AS 46.40.096

6 AAC 50.750. Activities generally subject to individual consistency review. (a) DGC, in consultation with the resource agencies, shall maintain a list of resource agency authorizations that authorize activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource (the C list). The “C List”, as revised, as of October 9, 2002, is adopted by reference.

(b) An activity that requires an authorization that is on the “C List” and that meets the requirements of 6 AAC 50.005(a)(2) is subject to an individual consistency review in accordance with this chapter, except as provided for in 6 AAC 50.700.

(c) An activity requiring a resource agency authorization that is not identified on the “C List” is not subject to an individual consistency review. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145

AS 44.19.161

AS 46.40.096

6 AAC 50.760. Review process for resource agency general permits. (a) A resource agency that develops a general permit under the resource agency's statutory or regulatory authority shall subject the general permit to a consistency review in accordance with the procedures identified in (b) of this section if the activities covered under the general permit may have a reasonably foreseeable direct or indirect effect on a coastal use or resource.

(b) If a new resource agency general permit or amendment to an existing resource agency general permit is proposed, the resource agency shall

(1) distribute the proposed general permit to the review participants and DGC;

(2) provide public notice of the proposed general permit in accordance with 6 AAC 50.500; and

(3) review the proposed general permit under 6 AAC 50.235 - 6 AAC 50.280.

(c) The resource agency shall provide DGC with a copy of the final approved general permit. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.770. Review process for a federal general permit and nationwide permit.

In accordance with 15 C.F.R. 930.31(d), a federal general permit or nationwide permit is subject to the consistency review process set out in 6 AAC 50.305 - 6 AAC 50.395. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.780. General consistency determinations for federal activities. (a) In accordance with 15 C.F.R. 930.36(c), a federal agency may provide DGC with a general consistency determination for a federal agency activity.

(b) A general consistency determination provided in accordance with 15 C.F.R. 930.36(c) is subject to the consistency review process set out in 6 AAC 50.305 - 6 AAC 50.395.

(c) If the final consistency response concurs with a general consistency determination for a federal agency activity, the activity will not be given further consistency review.

(d) DGC shall develop and maintain a list of general consistency determinations for federal agency activities. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

Article 8. Project Modifications and Renewals of Authorizations.

Section

800. Project modifications during a consistency review

810. Project modifications after issuance of a final consistency determination

820. Authorization renewals, re-issuances, and expirations

6 AAC 50.800. Project modifications during a consistency review. Except for a project subject to review under 6 AAC 50.305 - 6 AAC 50.395 or 6 AAC 50.405 - 6 AAC 50.495, the coordinating agency may terminate a consistency review if, after initiation of the consistency review,

(1) the coordinating agency receives information that indicates an additional authorization subject to the consistency review is required; or

(2) the applicant substantially modifies the description of the project. (Eff. 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.810. Project modifications after issuance of a final consistency determination. (a) An applicant that proposes a modification to an activity that is part of a project for which a final consistency determination or response has been issued must submit a new coastal project questionnaire that includes a detailed description of the proposed modification. The coastal project questionnaire for the proposed modification must be submitted to the agency that coordinated the consistency review of the project.

(b) A modification that is proposed to a project for which a final consistency determination or response has been issued is subject to a consistency review if the proposed modification may cause additional impacts to a coastal use or resource and

(1) a new resource agency authorization subject to the consistency review process or a new federal authorization under 6 AAC 50.405 is required; or

(2) a change to an existing resource agency or federal authorization is required.

(c) Only the part of the project affected by a proposed modification is subject to a consistency review. Alternative measures developed during the consistency review of a proposed modification must address only the impacts caused by the modification.

(d) Except as provided in (e) of this section, the resource agency that is issuing a new authorization, or whose authorization requires modification, shall serve as the coordinating agency and render the consistency determination for a proposed modification.

(e) DGC shall serve as the coordinating agency and render the consistency determination or response for a proposed modification if

(1) the modification requires a new or amended federal authorization;

(2) the modification requires a new authorization from two or more resource agencies;

(3) a change to an existing authorization from two or more resource agencies is required; or

(4) more than one modification is proposed at the same time and the combined proposed modifications require authorization action from two or more resource agencies.

(f) The coordinating agency shall distribute the coastal project questionnaire for the proposed modification to the review participants. Each review participant shall respond to the coordinating agency within seven days after the coastal project questionnaire is distributed and a

(1) resource agency shall determine whether a new authorization or change to an existing authorization is required; and

(2) review participant shall consider whether the proposed modification may cause additional impacts to a coastal use or resource.

(g) If, after reviewing responses received under (f) of this section, the coordinating agency determines that the proposed modification will not cause additional impacts to coastal uses and resources, the modification is not subject to consistency review. The appropriate resource agency or federal agency will process the proposed modification as required under the agency's statutory and regulatory authority.

(h) If, after reviewing responses received under (f) of this section, the coordinating agency determines that the proposed modification may cause an additional impact to a coastal use or resource, the coordinating agency shall initiate a consistency review for the proposed modification under the appropriate consistency review process described under 6 AAC 50.005.

(i) The following modifications, that have no additional effect on coastal uses and resources, are not subject to further consistency review:

- (1) a change in ownership;
- (2) a change in contractor or subcontractor;
- (3) a decrease in the impact of the project with no change of purpose;
- (4) authorization modifications that are within the scope of the original project that was reviewed;
- (5) authorization modifications that are allowed under the original authorization conditions;
- (6) authorization modifications that are meant to clarify requirements in the previously issued authorization.

(j) A modification to a federal agency activity shall be addressed under 15 C.F.R. 930.30 - 930.46. A modification to a project requiring a federal license or permit shall be addressed under 15 C.F.R. 930.50 - 930.66 or 15 C.F.R. 930.70 - 930.85. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50.820. Authorization renewals, re-issuances, and expirations. The renewal or re-issuance of an authorization for an existing project, or the issuance of an authorization to replace an expired authorization for an existing project, is not subject to a consistency review under this chapter, unless the applicant proposes a modification. If an applicant proposes a modification to an activity that is part of an existing project when seeking the renewal or re-issuance of an authorization for that project, or when seeking an authorization to replace an expired authorization for that project, the applicant must submit the proposed modification for review under 6 AAC 50.810. (Eff. 1/21/2003, Register 164)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

Article 9. General Provisions.

Section

920. Emergency expedited review

950. Computation of time

990. Definitions

6 AAC 50.920. Emergency expedited review. (a) If an applicant needs an expedited consistency review due to a disaster emergency declared under AS 26.23 or AS 46.04.080, or if the coordinating agency finds that an expedited review is necessary for the immediate preservation of the public peace, health, safety or general welfare, the coordinating agency, in consultation with the resource agencies and any affected coastal resource district, may expedite a consistency process established in this chapter as necessary to meet the emergency. The decision to expedite the review shall be based upon clear and convincing evidence of a need to expedite the review.

(b) The coordinating agency shall document in writing a decision under (a) of this section to expedite a consistency review. The coordinating agency shall expedite the consistency review process as necessary to meet the emergency, shall provide public notice of the expedited consistency review process in accordance with AS 46.40.096 and in the appropriate format and medium given the emergency, and as soon as practicable, shall issue a proposed consistency determination and final consistency determination in accordance with AS 46.40.096(d), 6 AAC 50.260 and 6 AAC 50.265.

(c) Notwithstanding (a) of this section, if the Department of Environmental Conservation determines that an oil spill or hazardous substance release poses an imminent threat to public health, safety, or the environment, the coordinating agency shall expedite, in accordance with (b) and (d) of this section, the consistency review for the immediate containment and cleanup of oil or hazardous substance release under AS 46.04.020 or AS 46.09.020 in order to reduce or remove the threat to public health, safety, or the environment.

(d) An expedited consistency review is not subject to the public notice requirements under 6 AAC 50.500. The elevation process under 6 AAC 50.600 shall be expedited as necessary to meet the emergency.

(e) Nothing in this section affects the governor's powers under AS 26.23 during a disaster emergency declared under that chapter. (Eff. 1/21/2003, Register 164)

6 AAC 50.950. Computation of time. A time period under this chapter must be calculated using calendar days. An action required to be taken on a specific day must be taken no later than 5:00 p.m. that day, except that an action required to be taken on a Saturday, Sunday, or state or federal holiday must be taken no later than 5:00 p.m. the next working day. (Eff. 7/1/99, Register 150; am 1/21/2003, Register 164)

Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100

6 AAC 50.990. Definitions. (a) In this chapter, unless the context indicates otherwise,
(1) "ACMP" means the Alaska coastal management program, as set out in AS 46.40, this chapter, 6 AAC 80, 6 AAC 85, and the program's enforceable policies;

(2) "affected coastal resource district" has the meaning given in AS 46.40.096(g)(1);

(3) "alternative measure" means a modification to a project that, if adopted by the applicant, would achieve consistency with the enforceable policies of the ACMP;

(4) "applicant" means a person who submits

- (A) an application for a resource agency or federal authorization; or
- (B) to the United States Secretary of the Interior an OCS plan within the meaning given in 15 C.F.R. 930.73;
- (5) “approved program” means a district coastal management program approved by the council under AS 46.40 and filed by the lieutenant governor's office as provided under 6 AAC 85.180;
- (6) “authorization” means
 - (A) a permit, license, authorization, certification, approval, or other form of permission that a resource agency is empowered to issue to an applicant and that appears in the list adopted by reference at 6 AAC 50.750; for purposes of this subparagraph, “authorization” does not include a notice of intent required to obtain a general permit reviewed and approved under this chapter; and
 - (B) a federal permit or license within the meaning given in 15 C.F.R. 930.51;
- (7) “biological or physical resources” means resources in the coastal zone; “biological or physical resources” includes plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, submerged aquatic vegetation, lands, gravel, sand, fresh water, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, barrier islands, lagoons, exposed high energy coasts, and upland habitat;
- (8) “coastal use or resource” means a land or water use or natural resource of the coastal zone; “coastal use or resource” includes subsistence, recreation, public access, fishing, historic or archaeological resources, geophysical resources, and biological or physical resources found in the coastal zone on a regular or cyclical basis;
- (9) “coastal zone” means the coastal waters, including the lands within and under those waters, and adjacent shorelands, including the waters within and under those shorelands, within the boundaries established under 6 AAC 85.040; “coastal zone” does not include those lands excluded under 16 U.S.C. 1453(1);
- (10) “consistency certification” means a declaration that is supported by the necessary data and information by an applicant that a proposed project complies with the enforceable policies of the ACMP and that the project will be conducted in a manner consistent with the ACMP;
- (11) “consistency determination” means a document rendered by a coordinating agency that indicates whether a proposed project is consistent or inconsistent with the ACMP; “consistency determination”
 - (A) includes a consistency response; and
 - (B) does not include a federal consistency determination;
- (12) “consistency response” means the response rendered by DGC under
 - (A) 6 AAC 50.305 - 6 AAC 50.395 to a federal consistency determination; or
 - (B) 6 AAC 50.405 - 6 AAC 50.495 to a federal consistency certification;
- (13) “consistency review” has the meaning given in AS 46.40.210;
- (14) “coordinating agency”

- (A) means the agency responsible for coordinating a consistency review and rendering a proposed or final consistency determination as set out under AS 44.19.145(a)(11) and AS 46.40.096; and
- (B) has the same meaning as "reviewing entity," as used in AS 46.40.096;
- (15) "council" means the Alaska Coastal Policy Council;
- (16) "cumulative impacts" means reasonably foreseeable effects on a coastal use or resource that result from the incremental impact of an individual project when viewed together with the impacts of past and currently authorized projects;
- (17) "DGC" means the division of governmental coordination within the office of management and budget in the Office of the Governor;
- (18) "de minimis impact" means an insignificant
- (A) direct effect on a coastal use or resource; or
- (B) indirect effect on a coastal use or resource; for purposes of this subparagraph, "indirect effect" includes cumulative impacts and secondary effects;
- (19) "DNR" means the Department of Natural Resources;
- (20) "disposal of interest in state land" means the sale, lease, or other disposition of state-owned or state-managed land or resources by DNR;
- (21) "district" has the meaning given "coastal resource district" in AS 46.40.210;
- (22) "due deference" means that deference that is appropriate in the context of the commentor's expertise or area of responsibility, and all the evidence available to support any factual assertions;
- (23) "elevation" means a subsequent review under AS 46.40.096(d)(3) of a proposed consistency determination;
- (24) "enforceable policy" means a
- (A) standard under 6 AAC 80.040 - 6 AAC 80.150; and
- (B) policy in an approved program that is legally binding, as developed under 6 AAC 85.090;
- (25) "federal consistency certification" means a consistency certification that
- (A) an applicant for a required federal license or permit provides to DGC in accordance with 16 U.S.C. 1456(c)(3)(A) (sec. 307(c)(3)(A) of the Coastal Zone Management Act) and 15 C.F.R. 930.57 - 930.58; or
- (B) is provided to DGC, in accordance with 16 U.S.C. 1456(c)(3)(B) (sec. 307(c)(3)(B) of the Coastal Zone Management Act) and 15 C.F.R. 930.76, by a person who submits to the United States Secretary of the Interior an OCS plan within the meaning given in 15 C.F.R. 930.73;
- (26) "federal consistency determination" means a submission that a federal agency provides to DGC in accordance with 16 U.S.C. 1456(c)(1)-(2) (sec. 307(c)(1)-(2) of the Coastal Zone Management Act) and 15 C.F.R. 930.36 - 930.40, to indicate whether a federal agency activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP;
- (27) "general permit" means an authorization that covers a group of similar facilities or activities subject to standard requirements;

(28) “OCRM” means the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration of the United States Department of Commerce;

(29) “OMB” means the office of management and budget in the Office of the Governor;

(30) “project” means all activities that will be part of a proposed development;

(31) “render” has the meaning given in AS 44.19.152;

(32) “resource agency” means the Department of Environmental Conservation, the Department of Fish and Game, or the Department of Natural Resources;

(33) “review participant” means

(A) a resource agency, a state agency that has requested participation, and an affected coastal resource district; and

(B) if a project includes an oil discharge prevention and contingency plan required under AS 46.04.030, an affected regional citizens advisory council as established under 33 U.S.C. 2732(d), in addition to the persons listed in (A) of this paragraph.

(b) For purposes of AS 46.40.096(g)(1) and this chapter, “direct and significant impact” means an impact that contributes to a material change in or alteration of natural, social, cultural, or economic characteristics of a coastal use or resource.

(c) In AS 44.19.145(a)(11),

(1) “conclusive state consistency determination” means a final consistency determination as described in AS 46.40 and this chapter;

(2) “federal consistency certification” means a consistency response rendered under 6 AAC 50.405 - 6 AAC 50.495;

(3) “federal consistency determination” means a consistency response rendered under 6 AAC 60.305 - 6 AAC 50.395. (Eff. 7/1/99, Register 150; am 1/21/2003, Register 164)

Authority:	AS 44.19.145	AS 46.40.010	AS 46.40.096
	AS 44.19.161	AS 46.40.040	AS 46.40.100